IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA.

CWP NO.274 Of 2005.

Judgment Reserved on 08.3.2007.

Date of decision: March 14th,2007.

Vijay Kumar Sharma. ……. Petitioner.

Vs.

State of H.P. and others. ……. Respondents.

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The Hon'ble Mr.Justice Deepak Gupta, Judge.

The Hon'ble Mr.Justice Surinder Singh, Judge.

Whether approved for reporting? Yes

For the petitioner: Mr.B.C. Negi, Advocate.

For the respondents: Mr. R.M. Bisht, Dy.A.G. with Mr. J.S. Guleria, Law Officer for respondents No.1 to 3.

Mr. K.L. Bali, Advocate, for respondent No.4.

Mr. Suneet Goel, Advocate, for respondent No.5.

Mr. Ramakant Sharma, Advocate, for respondent No.6.

Surinder Singh, J.

The petitioner is resident of Sanjauli, Tehsil and District Shimla.In public interest, the petitioner has mainly sought the following relief:-

(i) "Opening of Bar and proposed Liquor Vend at Sanjauli Chowk, be shut down and closed.

(i)(a) To order the closure of the Bar and Liquor Vend at Sanjauli.

(ii) Direct the respondent authorities to review the place of all existing

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Whether reporters of local Papers may be allowed to see the judgment? Yes.

Liquor vends within Shimla City and its immediate vicinity.

(ii)(a) Direct the closure of all liquor vends which have been opened up by not following the procedure laid down.

(ii)(b) Direct the respondent authorities to scrupulously adhere to the legal provisions while permitting/granting permission to sell liquor in future."

We have heard the learned counsel for the parties and have judicially scanned the documents on record.

In brief, the facts are that a Bar under the head and style 'Uphar Bar & Restaurant' at Sanjauli Chowk, was opened during the financial year 2006-07. A liquor vend was being contemplated to be opened in the busy Bazaar of Sanjauli, situated at the very start of the climb to the Dhingoo Temple, by respondent No.5 who has been allotted the liquor vend for the current year, in public interest. The petitioner has contended that it is contrary to the directions issued by this Court from time to time and is in contravention of the **Himachal Pradesh Liquor License Rules, 1986 and Himachal Pradesh Intoxicants License & Sales Order 1965.** Further according to the petitioner, even in New Shimla at a National Highway, there also exists a **Bar and liquor vend**, situated in the vicinity of a public school. No norms of the distance were adhered to.

Contra, the respondents contended that the Bar and Liquor Vend aforesaid conform to the Condition

No.6 of the Excise Policy, for the year 2005-06, which is in conformity with law.

As a matter of fact, the sale of liquor is regulated and controlled under the provisions of **Punjab Excise Act, 1914 (as applicable to the State of Himachal Pradesh,** which *inter alia* provides that **no liquor can be sold in the State of Himachal Pradesh except under the authority and subject to the terms and conditions of a licence granted in this behalf under the Act aforesaid and rules framed there under.** Further licence so granted is subject to such restrictions and on such conditions as the Excise Commissioner may direct. It also empowers to make rules regulating the periods and localities for which the persons or class of persons to whom licences for the vend by wholesale or by retail or any intoxicant may be granted.

The State of Himachal Pradesh has framed the **Himachal Pradesh Liquor Licences Rules, 1986 and Himachal Pradesh Intoxicants Licence and Sale Orders, 1965 (hereinafter called the Order).** The relevant provisions of the said Order which deals with the specific procedure while granting of licence are as under:-

> **"4.*Localities for which licences may be granted-***
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> Shops may be licensed for the sale of liquor and drugs in only such villages and in such wards of quarters of towns as the Financial Commissioner shall, subject to the control of the State Government from time to time direct.

5. No licence for the sale of liquor of drugs may be given **unless either there is an ascertained demand** for such liquor or drugs in the locality concerned or **it is granted to counteract the illicit supply of liquor licences for on consumption without the procedure** of enquiry prescribed by orders 8 to 13 of these orders:

Provided that a licence for the sale of foreign liquor or country liquor may be granted at any place where there already exists a licence for the sale of country liquor or foreign liquor if the Financial Commissioner so desires necessary without the procedure of enquiry prescribed above.

6. ***Number of licences***- The number of liquor and drug shops, which may be licensed in any local area, shall be the number which the Financial Commissioner, subject to the control of the State Government considers necessary to meet the reasonable requirements of the population.

7. ***Persons to whom licences may not be granted-***

A licence for the vend of liquor or drug may not be given:

a) to any person who has been finally convicted of any non-bailable offence by a criminal court;

b) to any person, whether a former licensee or not, who has been convicted, or reasonable suspected of committing or conniving at the commission of any offence under the Excise or Opium Acts, or the Punjab Opium Smoking Act or the Dangerous Act;

c) to any person who has held a licence in Himachal Pradesh for the sale of any intoxicant has that license cancelled for failing to pay his licence fees and

had subsequently not paid the arrears demanded, unless he has been especially exempted by an order of the Financial Commissioner.

8. ***Procedure to be followed and matters to be ascertained before any licence is granted for the retail vend of liquor for consumption on the premises-*** When it is proposed to grant a licence **for the retail vend of liquor for consumption on any premises, which were not licensed in the preceding year**, the Collector shall take all reasonable **steps to ascertain the opinion of persons who reside or have property in the neighbourhood and are likely to be affected by the proposal.**

9. The Collector shall **post a notice** of the proposal at or near the site proposed for the new licence, and shall cause the proposal to **be made known in the neighbourhood by beat of drum or in any manner the Collector may deem fit. If the proposed premises are a municipal area**, or small town or notified area, **the Collector, shall lay the proposal in writing, before the Committee of municipality**, small town or notified area and if in a rural area, before the gram panchayat.

10. The Collector **shall also ask for the opinion of the Superintendent of Police.**

11. If the site of the proposed licence is near railway station, or any large factory, mill or workshop, the Collector shall ask for the opinion of the railway authorities or **the commercial firms concerned.**

12. If any objection is preferred to the proposal within 30 days from the date of the notice referred to in orders 9 and 10 of these

> Orders, the Collector or a gazetted officer deputed by him, shall enquire into it. The enquiry will, if possible, be made on the spot. If it is not possible to make an enquiry on the spot, an enquiry will be made in formal proceedings at which evidence tendered for or against the proposal would be recorded. The date and place of the enquiry would be published in the notice prescribed above and will be made known to the public concerned in the manner deemed necessary by the Collector.
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> 13. **The final report, together with the opinion of the local body concerned (provided this opinion is furnished within 5 weeks from the date of the reference mentioned in order 12 of these Orders), will be forwarded by the Collector for the orders of the Financial Commissioner.”**
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> [Emphasis ours]

Thus, a perusal of the above provisions leaves no manner of doubt about the granting or refusing a license as these are self explicit, comprehensive and mandatory in nature and are required to be adhered to by the respondents in its letter and spirit before a licence is granted for the said purpose.

On examination of this matter, we have found that the procedure adopted in the present case appears to have been followed more in breach than in compliance. The Rules clearly indicate and regulate the procedure before granting of the licence. The Collector inter alia is required to take all reasonable steps to ascertain the opinion of the persons who reside or have property in the neighbourhood and are likely to be effected. According to the respondents, they have obtained ‘No Objection Certificates’ from the

Councilor, Municipal Corporation, Shimla, President, Beopar Mandal, the local M.L.A. and the Superintendent of Police, Shimla and therefore, they have complied with the requirement of law. In our considered view, obtaining of No Objection Certificates from these four authorities is no compliance with the requirements of law. Under Rule 5, fresh licence for sale of liquor can only be given by ascertaining the demand, or to counteract the illicit supply of liquor. This has not been done. Before licence is granted under Rule 8, the Collector has to ascertain the opinion of the persons who reside or have property in the neighbourhood and are likely to be effected by setting up of a new Vend. No material has been placed on record to show that the Collector took any step to ascertain the opinion of persons in the locality. The Councilor and the MLA may be representatives of the people, but they are not the persons living in the neighbourhood. Under Rule 9, it is mandatory for the Collector to post a notice at or near the site proposed for the new licence. The proposal has to be made known to the public in the neighbourhood by beat of drum or such other manner as the Collector may deem fit. The proposal also has to be laid before the Committee of the Municipality. None of these was done. Therefore, the Collector has not at all followed the provision of Rules 8 and 9.

While looking into the provisions of the aforesaid orders, we are constrained to observe that the proper procedure laid down in the Order quoted

above was neither followed nor the matter was ascertained by the Collector in accordance with law.

Thus, in our considered opinion, the licence granted to the private respondents for the "Bar and Restaurant" is not in conformity with the aforesaid provision of the Act, Rules and the Orders referred above. Since there are few days left for the closure of financial year, therefore at this stage, no fruitful purpose will be served by canceling the licence aforesaid. However, we dispose of the instant petition with a direction that the respondents shall henceforth comply with the relevant provisions of the Act, Rules and Orders, in future, for which no laxity should be shown and we also direct that in case the respondents No.5 and 6 applies for the renewal of the licence, the same should be dealt with as a fresh case and the procedure as per law shall be adhered to. The writ is disposed of in the aforesaid terms.

C.M.P. No.562 of 2005.

In view of the disposal of the main writ petition, this application also stands disposed of accordingly.

(Deepak Gupta)
Judge.

March 14th , 2007.
(Pds)

(Surinder Singh)
Judge.